CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Customs Appeal Nos. 54406-54413 of 2014

(Arising out of order-in-original No. 14/2014/AD/Commr/ICD,TKD dated 31.03.2014 passed by the Commissioner of Customs, New Delhi)

DATE OF HEARING : 22.06.2017
DATE OF DECISION : 05.07.2017

CC, New Delhi …. **Appellant**
(Rep by Sh. Govind Dixit, DR)

VERSUS

Sh. Ravinder Kumar Gupta …. **Respondents**
Sh. A.T. Maiden (Rep. by NONE)
Sh. Sanah Kumar
Sh. Suresh Kumar
Sh. Chander Pal Pathak
Sh. Anil
Sh. Babloo
Sh. Munni Yadav

CORAM : HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE MR. B. RAVICHANDRAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 54657-54664/2017

PER JUSTICE (Dr) SATISH CHANDRA:

All the present appeals are filed by the Department against the common order-in-original No. 14/2014/AD/Commr/ICD,TKD dated 31.03.2014 passed by the Commissioner of Customs, New Delhi. The grievance of the Department is that the adjudicating authority has not imposed penalties in a proper manner on the Respondents.

2. The brief facts of the case are that, on the basis of a specific intelligence that consignments exported by M/s R.R. Industries, Khurja to M/s Sameerah General Trading, UAE, in two containers contained contraband goods. The containers were called back for examination much after they had already been given "LET EXPORT" from the Port. After the arrival of the said containers at the ICD, Tughlakabad, New Delhi, the Officers of the DRI visited the said Port on 02.06.2011 for conducting the examination of the same. The containers were inspected in the presence of the independent witnesses, Shri Ravinder Kumar Gupta (Exporter), Shri Charan Das (CHA), Inspector of the Customs and the DRI Officers. It was found that the seals were intact and their numbers tallied with the numbers mentioned in the documents enclosed with the shipping bills. Shri Devender Singh Bist, Surveyor of M/s Balaji Shipping Co., examined the seals affixed on the two containers and reported that the shipping line seals affixed on the said containers were the original shipping line seals issued by M/s Balaji Shipping Lines. Both the containers were examined where it was found to contain Wooden Logs of different sizes as against 550 boxes containing 4400 nos. of Post Insulators declared in the shipping bills and other export documents. These Logs were of **Red Sanders Wood** and collectively weighed 21885 kgs. The Deputy Director, Wild Life Crime Control Bureau, has confirmed that it was the Red Sanders Wood and estimated to the value of Rs. 2,18,85,000/- on the reasonable belief.

3. M/s R.R. Industries is owned by Shri Ravinder Kumar Gupta, Exporter at Khurja. Shri Ravinder Kumar Gupta, Proprietor of M/s R.R. Industries (Exporter), was arrested on 04.06.2011 under Section 104 of

the Customs Act, 1962, but was subsequently released on bail on 28.06.2011. In his statement, Shri Ravinder Kumar Gupta, recorded under Section 108 of the Customs Act, has *inter alia* stated that in his factory he manufactured 'Insulators' and purchased the raw-material i.e. clay and stone powder from Rajasthan and Bihar. The said 'Insulators' were sold by him to the Electricity Boards in India. In the year 2005, he visited the Trade Fair in Pragati Maidan, New Delhi and met a buyer of UAE and later this buyer visited his factory and ordered for purchasing 'Insulators'. After getting the order, he contacted Shri Om Prakash Pandey for Customs clearing job. He further submitted that on arrival of the container in his factory, the container was stuffed with Insulators in the presence of Inspector of the Central Excise and other Officers. He paid charges of Customs clearance and transportation to Shri Om Prakash Pandey. He received the full payment of the consignment through letter of credit (L/C) and this was the first and last consignment.

4. The statement of Shri Charan Dass, who provided the trailer for transportation, was also recorded under Section 108 of the Customs Act, 1962 on 03.06.2011 wherein he *inter alia* stated that he had been working in the Customs clearance line since 1998 and holding the 'F' Card. Nine persons are working in his firm and out of which four persons are holding 'G' Card & five 'H' Card. He admitted that he had provided the Customs clearance service to M/s RR Industries, Khurja, with whom he came in touch through Shri Om Prakash Pandey, Proprietor of Shri Omega Impex, Freight Forwarders. They got issued the Shipping Bills from ICD, Tughlakabad, New Delhi. The work for generating the Shipping Bills was done by their 'H' Card Holder, Shri Raj Bhan Singh, who had handed over those Shipping Bills to Shri Shekhar of M/s Atul Transport. He further

stated that they had no direct contact with any person of M/s RR Industries.

5. Statement of Shri Om Prakash Pandey, Proprietor of M/s Omega Impex, was recorded on 07.06.2011 under Section 108 of the Customs Act, 1962 wherein he *inter alia* stated that as freight forwarders his work was to take the rates from the Shipping Company and to give to Exporters against commission. He came into contact with Shri Ravinder Kumar Gupta of M/s RR Industries, Khurja, through one Shri Ajay of M/s B.D.P. India Limited, who contacted him on telephone to arrange for factory stuffing permission of containers to M/s RR Industries.

6. Both the arranged trucks were owned by Shri Chander Pal Pathak of New Delhi, for using transportation of the above said two containers from the factory premises at Khurja to ICD, Tughlakabad, New Delhi, for exporting the same to UAE.

7. Statement of Shri Dharmendra, Manager of Shipping Lines, Balaji Shpping Lines, was also recorded on 09.06.2011 wherein he *inter alia* stated that two seals had been issued to M/s TICC Container Pvt. Ltd. The name of the person, who had taken line seals from ICD, Tughlakabad, New Delhi, could be told by Shri Surendran Nair of TICC. Statement of Shri Surendran Nair, Branch Manager of M/s TICC Container Line (I) Ltd., was also recorded on 13.06.2011 wherein he *inter alia* stated that two containers were supplied to M/s RR Industries at the instance of Shri Om Prakash Pandey of M/s Omega Impex. For freight rates, they referred to M/s Albatross Shipping, Okhla, Delhi-110020, and Shri Om Prakash Pandey provided the shipping bills copy.

8. Statement of Shri J.P. Singh, Director of M/s Tetra Tech Seals (P) Ltd., was recorded on 06.09.2011 wherein he *inter alia* stated that there was a minor variation in the seals. In another case, seizure of about 120 MT of Red Sanders Wood, logs from different godowns located in and around Delhi was made and during investigation of this case, one person by the name of Shri A.T. Maideen S/o Shri Ahamed Thambi, R/o 26, Sa it Colony, 1st Street, Egmore, Chennai-80, was summoned under Section 108 of the Customs Act, 1962 and his statement was recorded on 27.11.2011. In his statement, he *inter alia* stated that he had been booked under Customs Act two times for illegal export of sandalwood to Singapore through sea route; that in both the cases COFEPOSA was imposed on him; that he had also been booked by DRI Kolkata for illegal export of Red Sanders in the year 2004 and even in this case COFEPOSA was imposed on him; that his old business friend Shahul Hameed of Dubai had asked him to supply Red Sanders and for this purpose he gave him the contact number of one Mr. Sanath Kumar of Red Hills, Chennai, who was to arrange clearance of red-sanders through various export firms; that as per directions of Mr. Sanath Kumar and Shahul Hameed, he used to supply the Red Sander at the given place/destination; that recently, he had given Sanath Kumar delivery of Red Sanders at Ludhiana of about 7 tonnes around 11.10.2011, who exported the same in the name of M/s Bhatinda Ceramics Punjab to M/s Badgeua Enterprises, Malaysia. The Red sanders was given by one Mr. Chellathambi at Delhi and the same were transported to Ludhiana by the drivers Red Sanders to Shahul Hameed through M/s Deepak Ceramic, Muzaffarnagar, UP, M/s RR Industries, Khurja, UP; M/s D.R. Foods, Karnal, M/s Sandeep Soap Factory; that the Red Sanders exported in the name of above said firms was purchased from A.P; that

Sanath Kumar had informed him that he had been exporting the Red Sanders by replacing the original stuffed containers with the Red Sanders and the seal of the containers normally was safe but the container was opened by removing the rivets on the handle of the door of the container and sometimes it was opened by breaking the seals and replacing them with duplicate seals and that he did not know from where Sanath Kumar was arranging the duplicate seals.

9. In these circumstances, the adjudicating authority has not levied any penalty on Shri Ravinder Kumar Gupta, Proprietor of M/s RR Industries, Khurja, Shri A.T. Maideen and Shri Sanath Kumar. The adjudicating authority kept the imposition of penalty in abeyance on Shri Suresh Kumar. However, penalty of Rs. 50,000/- on Shri Chander Pal Pathak; Rs. 10,000/- each on Shri Anil, Supervisor of M/s Atul Cargo; Shri Babloo, Driver; and Shri Munni Yadav, Driver, was imposed.

10. Being aggrieved, the Department has filed the present appeals.

11. With this background, we have heard Shri Govind Dixit, learned DR for the Department-Appellant. None appeared for the Respondents nor is any application for adjournment is available on record.

12. After hearing the learned DR for the Department and on perusal of the record, it appears that in the instant case two containers were arranged to the factory of M/s RR Industries at Khurja where post Insulators were stuffed in the factory premises in the presence of Inspector of Central Excise Department, who was deputed by the Superintendent of

Central Excise. From the record, it appears that the containers stuffed with the post Insulators have been tampered, apparently, in transit by certain persons who are for the Department to trace and book them under the law. The truck owner, Shri Chander Pal Pathak in his statement dated 30.04.2012 has stated that the empty containers reached the premises of the notice no. 1 at Khurja on 07.04.2011 which were stuffed on 08.04.2011 and the same reached the ICD, Tughlakabad, New Delhi, on 09.04.2011. In the circumstances, it is evident that Shri Ravinder Kumar Gupta, noticee no. 1, is not a person behind the fraud and alleged attempt to smuggle prohibited goods outside India. Shri I.P. Singh, Director of M/s Tetra Tech Seals, on examining the seals informed that there were minor variation in the logo of BSL over some wave and thickness of pins of both the seals. The seals on the containers were put in the factory premises with the certificate "LET EXPORT". From the statement of the owner of the trailer, Shri Chander Pal Pathak, it appears that both the drivers as well as the Supervisor, Shri Anil, had run away without clearing their dues and taking payments.

13. On the direction given by Shri Anil (Supervisor), both the drivers took the trailers to a godown located at some dark place on a link road to the main road where some persons were already present. They were told to get down of the trailers and were escorted to a room nearby and told to wait there. The said persons then opened the containers and off loaded the Insulators and in their place loaded some logs of wood and closed the containers again. Thereafter, the Drivers were threatened not to tell anybody about the activity they had seen and then left the place. Thereafter, the drivers took the containers to the ICD, Tughlakabad, New Delhi. Under these circumstances, we find that the noticee no. 1, Shri

Ravinder Kumar Gupta, is not a culprit. He did all the formalities which were required under the law for the export of the Insulators. Hence, the lower authorities has rightly not imposed penalty on him. The order of the lower authority in this regard is sustained along with the reasons mentioned therein.

14. As regards the imposition of penalty on Shri A.T. Maideen, noticee no. 2, it appears that he is neither the exporter of the goods nor in any manner connected with the present export consignment. He was an accused in a different case and that too was retracted by him at the earliest available opportunity. His statement was recorded on 27.11.2011 before the DRI Officers where he had disclosed his old business of Red Sanders Wood. Be that as it may. But the fact remains that he is neither the exporter nor any beneficiary. Hence, the lower authority has rightly not imposed any penalty on him. Therefore, he is not liable to the penalty under Section 114 of the Customs Act, 1962.

15. Regarding imposition of penalty on Shri Sanath Kumar, noticee no. 3, it appears that Shri A.T. Maideen has given his (Shri Sanath Kumar) number to his old business friend. As per the direction of Shri Sanath Kumar, in the past, he used to supply the Red Sanders at the given place. But the fact remains that, Shri Sanath Kumar, who was actively involved in the smuggling of Red Sanders was not involved in the instant case. He too is neither exporter nor active conspirator in the instant case, so the lower authority has rightly not imposed penalty on him.

16. Regarding Shri Suresh Kumar, noticee no. 4, it appears that he was a middleman/agent of the foreign buyer of Red Sanders, who had

contacted Shri Ravinder Kumar Gupta, Proprietor of M/s RR Industries. His statement was not recorded. Shri R.K. Gupta in his statement stated that Shri Suresh Kumar of Siliguri told him on phone that he is an agent of the foreign buyer and collected orders of Insulators. When Shri Ravinder Kumar Gupta asked for the advance payment on phone, then Shri Suresh Kumar agreed for it and entire payment was made through letter of credit (L/C). Shri Suresh Kumar is not traceable. The address given by Shri Suresh Kumar was found fake. When Shri Suresh Kumar is not traceable, then the lower authority has rightly kept the imposition of penalty in abeyance against Shri Suresh Kumar as the same cannot be recovered until he is traced.

17. Regarding Shri Chander Pal Pathak, noticee no. 5; Shri Anil Supervisor of M/s Atul Cargo, noticee no. 6; Shri Babloo, Driver, noticee no. 7; and Shri Munni Yadav @ Kamlesh, Driver, noticee no. 8, it appears that they were involved in the transportation of the containers. Shri Chander Pal Pathak, is the owner of both the trailers which were used for the transportation of the containers from factory to ICD, Tuglakabad, New Delhi. When Shri Chander Pal Pathak is the owner, then he is also responsible for the illegal activities carried out by their agents i.e. Supervisor and Drivers. So, the lower authority has rightly imposed the penalty of Rs. 50,000/- on him for the acts of omission and commission on his part, as discussed above.

18. Penalty of Rs. 10,000/- each on Shri Anil Supervisor of M/s Atul Cargo, noticee no. 6; Shri Babloo, Driver, noticee no. 7; and Shri Munni Yadav @ Kamlesh, Driver, noticee no. 8, was rightly imposed by the lower authority for the acts of omission and commission on their part for

carrying out the illegal export of the Red Sanders. In the peculiar facts and circumstances, the same appears reasonable.

19. In view of the above, we uphold the impugned order in toto for the reasons mentioned above.

20. In the result, all the appeals filed by the Revenue are hereby dismissed.

(Pronounced in the open court on 05.07.2017)

(JUSTICE DR. SATISH CHANDRA)
PRESIDENT

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

Golay